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*not admitted in MT

Of Counsel
Robert Bennett Lubic*

November 19, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

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NOV 19 2002

GLOBAL COMMUNICATIONS COMMERCIAL
SECTION OF THE SECRETARY

Re: MM Docket No. 02-40

Dear Ms. Dortch:

On behalf of Franklin Broadcasting Co., Inc., licensee of Radio Station **WHLQ**,
Louisburg, North Carolina, there are transmitted herewith an original and four **(4)** copies
of its Opposition to the Motion for Leave to File Supplement filed by New Age
Communications, Inc.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very **truly** yours,

James A. Brown

James **A.** Koerner,
Counsel for
Franklin Broadcasting Co., Inc.

Cc: Mollie Evans

No. 10-1987-1000
Listed as 644E

3+4

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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NOV 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 02-40
Table of Allotments)	RM-I0377
FM Broadcast Stations)	RM-I0508
(Goldsboro, Smithfield,)	
Louisburg and Rolesville, North Carolina)	

TO: Chief, Allocations Branch

OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENT

Franklin Broadcasting Co., Inc., licensee of Station WHLQ ("WHLQ"), by its attorneys, hereby opposes the Motion for Leave to File Supplement ("Motion") filed by New Age Communications, Inc. ("NAC") on November 4, 2002. In response thereto, the following is submitted.

As NAC acknowledges, the original petition for rule making was tiled by NAC on August 3, 2001. It was based upon the facts as then existed. WHLQ filed its counterproposal on April 12, 2002. It also was based upon the facts as then existed. Subsequently, NAC attempted to discredit the WHLQ counterproposal by arguing that it

was subject *to* a ***Tuck*** analysis based upon the facts that existed on April 12, 2002.¹

WHLQ then filed its comments on the NAC attempt.

Now, some seven months after the counterproposal was filed, and six months after NAC attempted to discredit the counterproposal, NAC comes forward with "new" evidence which it wishes the Commission to consider.

Section 73.415(d) of the Rules is quite explicit. After the time for comments and reply comments, and, in this case, comments on the counterproposal, no further comments are allowed. The reason for this is clear. There must come a time in every case when the FCC can judge the facts and make its decision. If there is a continuously moving target, there can never be a decision and administrative finality.

This rule making proceeding should be decided on the facts as they existed when NAC made its proposal, and when WHLQ made its counterproposal. To do otherwise would permit a party to advance additional arguments every six months in order to delay any final decision in the proceeding. That is what NAC appears to be doing here.

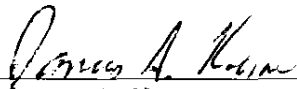
While NAC avers that the new Raleigh Urbanized Area definition was only released in October, the Census Bureau has advised counsel that it was released by May 1, 2002. Thus, when NAC filed its Reply Comments, on May 10, 2002, it could have used the new definition of the Raleigh Urbanized Area. But, it did not. Instead, it waited until the approximate time that the FCC might have issued a Report and Order in this proceeding to file a request to open a new Comment and Reply Comment period. In another six months, there might be other changes which NAC would wish the Commission to address

¹ *Lave and Richard Tuck*, 3 FCC Rcd 5374 (1988)

In short, NAC's attempt to present the FCC with a "Supplement" is nothing more than an attempt to supply additional comments in violation of Section 1.415(d). It should be rejected out of hand.

Respectfully submitted,

FRANKLIN BROADCASTING CO., INC.

By: 
James A. Koerner
It's Attorney

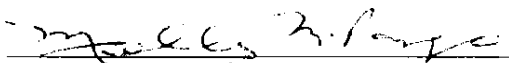
November 19, 2002

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CERTIFICATE OF SERVICE

I, Molly M. Parezo, a secretary in the law offices of Koerner & Olcider, P.C., do hereby certify that a copy of the foregoing **"Opposition to Motion for Leave to File Supplement"** was served this 19th day of November, 2002, via first class mail, postage prepaid upon the following:

Wade H. Hargrove, Esq.
David Kusher, Esq.
Brooks, Pierce, McLendon, Huinphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, NC 27602


Molly M. Parezo